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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 7

SUSAN EPPERSON AND H. H. BLANCHARD, ... *Appellants,*

v.

STATE OF ARKANSAS, ... *Appellee.*

MOTION TO DISMISS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967
No. 749

SUSAN EPPERSON AND H. H. BLANCHARD, ... *Appellants.*

v.

STATE OF ARKANSAS, ... *Appellee.*

MOTION TO DISMISS

CITATION TO OPINION BELOW

The decree entered by the Pulaski Chancery Court on June 16, 1966, was accompanied by a written opinion. That opinion, which is not officially reported, is set out in Appendix, page 21, of Appellants' Jurisdictional Statement. The opinion of the Supreme Court of Arkansas is set out in the Appendix, page 19, of Appellants' Jurisdictional Statement.

JURISDICTION

The appellants are attempting to appeal from a final order of the Supreme Court of Arkansas on July 26, 1967. The appellants cite 28 U.S.C. 1257 (2) as authority to appeal to this Court as they assert that Ark. Stat. Ann. §§ 80-1627 and 80-1628 (Repl. 1960) are unconstitutional and void as the above act violated their respective

constitutional rights guaranteed to the appellants by the First and Fourteenth Amendments to the Constitution of the United States. Appellee contends that it is clear from the record and from the statutes themselves that the statutes mentioned are a valid exercise of the State's power to specify the curriculum in its public schools and are not unconstitutional and therefore the appeal should be dismissed.

STATUTORY PROVISIONS INVOLVED

The statutes involved in this litigation are:

Ark. Stat. Ann. §80-1627 (Repl. 1960);

Ark. Stat. Ann §80-1628 (Repl. 1960).

STATEMENT OF THE CASE

The statement of the case included in the appellants' jurisdictional statement on pages 5, 6, and 7 sets out the material facts relative to this case. However, it is important to note that the State's position throughout has been that the statutes complained of are a valid exercise of the State's authority to regulate the curriculum in her public schools. This finding was upheld by the Supreme Court of the State of Arkansas.

QUESTIONS PRESENTED

The questions set out in the brief of the appellants fairly state the questions presented to this Court.

THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL

I

The appellants were not denied freedom of speech or freedom to learn or freedom of religion.

For appellants' first point, they assert that "[t]he statute violates Amendment 1 of the Constitution of the United States."

It is axiomatic that a teacher has freedom of speech; however, it is not absolute, but is limited. However, there should be, and is, a control over the classroom teacher, his or her method of teaching, and the subjects which are taught, and the State, as well as the professional educators, should exercise the control. The professional educators are in charge only as servants of the State, and it must be kept in mind that their *ultimate* employer *is* the State. In other words, the professional educators work *for* the State, and the State should and does have the final authority in determining the laws and policies which are adopted for the operation of the school. Appellants evidently want professional educators placed in a position away from State influence, the only part which the State is permitted to play being to pay the cost of construction and maintenance of the tower.

We submit that the American people have never abandoned to anyone the *sole* responsibility for selecting the course of study in our schools. We want to emphasize here that we are not referring to or judging the appellant herein, but we believe the Court should take judicial notice of the fact that many individuals, teachers included, espouse a philosophy which is not representative of the beliefs of the people as a whole, nor conducive

to the welfare of the Nation as a whole. In a democracy, the majority rules, and the people have it within their power to enact the laws whereby they shall be governed, regardless of whether one or more educators approve of them. Therefore, when dealing with a public institution, such as schools, the State has the right and responsibility to limit the teacher's classroom activities for the best interest of all the people.

The Appellants also claim that they are denied freedom of religion because of the statutes prohibiting the teaching the Darwinian Theory. The purpose of the statute is not necessarily to protect the Christian religion, but we believe that the people of the State of Arkansas have a right to pass such legislation for reasons other than the protection of their religious beliefs. Even if the facts were that the law was enacted to keep theories out of public schools which would contradict the story of the creation of the earth, as set forth in the Christian Bible, it still would not be unconstitutional.

II

Appellants were not denied the equal protection of the law.

Appellants contend for their second point that "The statute is void under the equal protection of the law clause of the 14th Amendment to the Constitution of the United States."

Appellants contend that the police power may not be exercised except where there is a clear and present danger to the people of the state.

On this we disagree. We believe that in the employer-employee relationship such a situation is not re-

quired. In the employer-employee cases, what is determinative is not whether there is a "clear and present danger" but whether the rules and regulations are reasonable. The validity of these statutes does not have to depend, however, on the authority of the State to enact them under its police power, since the State clearly has the authority to enact them *irrespective* of its police power.

Appellants assert that the statutes fall under the equal protection clause because the statutes apply only to public schools and do not apply to parochial or other private schools.

The error of the appellants, we believe, is that "students" is a broad classification and the classification should be broken down into public, private, and parochial schools.

The "students" attending public schools are not in the "same classification" as students attending the other two types of schools. If there is proper classification, then the statutes do not run afoul of the equal protection clause. 16A C.J.S., CONSTITUTIONAL LAW, §505 (b) (2), p. 314. For a case somewhat in point, see *Steele* v. *Sexton*, 234 N.W. 436 (1931), wherein it was held that there was no merit to the contention that a ban on fraternities in public schools discriminated in favor of private schools.

The separate classification of students attending public, parochial, or other private schools is a valid classification. The State has a vital interest in its public schools, and may validly exercise more control over them than over strictly private schools.

III

Appellants were not denied due process of law.

For their third point appellants state that "[t]he statute conflicts with the due process clause of Amendment 14 to the Constitution of the United States in that it is vague and indefinite."

In reading plaintiffs' complaint, we find the allegation that she (Mrs. Epperson) will violate the statutes unless they are declared unconstitutional. The complaint reads:

> (V) . . . Plaintiff intends to discuss and explain said theory or doctrine to her students notwithstanding the provisions of said statutes • • •
>
> (VIII) Plaintiff states that unless this Honorable Court enters its judgment and decree holding Arkansas Statutes 80-1627 and 80-1628 unconstitutional and void, plaintiff will be subject to fine and dismissal from her teaching position. Plaintiff states that the defendants will have no alternative but to dismiss plaintiff from her teaching position in the event the provisions of said act are invoked against plaintiff. . . .

It seems to us that appellant knew what the statutes meant when she filed her complaint, and, therefore, it is absurd for her to now say that the statutes are vague and that she does not understand them.

The issue of vagueness was raised in *Scopes* v *State*, 154 Tenn. 105, 289 S.W. 363, 53 A.L.R. 821 (1927), and was discussed at length in the Court's opinion. The Tennessee statute is not nearly as definite and certain

as the Arkansas statutes are; nevertheless, the Tennessee Court held that their statute was not vague and uncertain. Please note that the Arkansas statutes were drafted and passed in 1928, which was subsequent to the rendition of the *Scopes* decision in 1927, the Arkansas statutes being very carefully drawn in the light of the opinion in *Scopes*.

In their attempt to show vagueness, appellants take certain words in the statute out of context and play with them, *e.g.* the words "teach" and "textbook." Anyone can take words out of context, play with their meaning, and make any statute seem vague and uncertain. But, this is not the way the law looks at statutes.

IV

The effect of the statutes.

The discussion of appellants Part V on the effect of the statutes is only argument which has been presented earlier in our motion to dismiss, and for these reasons do not need to be reiterated here.

CONCLUSION

Therefore, for the foregoing reasons, the appellee submits that our motion to dismiss should be granted.

Respectfully submitted,

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